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COMMITTEE ON GENERAL AFFAIRS
February 28, 2005
LB 107, 108, 430, 668, 702

The Committee on General Affairs met at 1:30 p.m. on Monday, February 28, 2005, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 107, LB 108, LB 430, LB 668, and LB 702. Senators present: Ray Janssen, Chairperson; Deb Fischer, Vice Chairperson; Matt Connealy; Abbie Cornett; Philip Erdman; Mike Friend; David Landis; and Roger Wehrbein. Senators absent: None.

SENATOR FISCHER: My name is Deb Fischer and I am the senator from District 43, and I'm the Vice Chair of the committee and I will open the hearings today. Senator Janssen is introducing a bill before the Education Committee and he will be back shortly or possibly not so soon. If I could, I would like to introduce the members of the committee. Senator Erdman is walking in; nice to have you.

SENATOR ERDMAN: Thank you.

SENATOR FISCHER: Senator Friend from Omaha will be introducing the first bill. To my far left is Senator Cornett. Next to her is Senator Wehrbein, Senator Connealy, and then we have the committee clerk, Brittany, thank you; and our legal counsel, Laurie. If we can I will open the hearing now on LB 107, and Senator Friend...oh, if you would wait just a minute, I need to go over a few things. First of all, if you are going to testify before a bill, please have your form filed out so you can put it in the little box up here on the table, and then we'll be able to make sure that we have all the testimony recorded properly. If you would also spell your name for the record, that would be helpful. If you are representing someone, please state who you are representing. The way we run the hearings, we have after the introducer is finished, we have the proponents speak, then the opponents, and then anyone wishing to testify in a neutral capacity, and we will follow that format today. We don't have a specific time limit on testimony but we do ask that you try and keep your testimony short, and if someone who testifies before you has said what you would like to say, you don't need to repeat it. You can just say that you agree with that person and hit the points briefly. Also I would ask that you turn off any cell phones that you have or any pagers, and also to please not to have

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any conversations while the hearing is going on so that we are able to hear the testimony that is being brought today before the hearing. And with that I will open the hearing on LB 107. Senator Friend.

LB 107

SENATOR FRIEND: Thank you, Senator Fischer, and members of the General Affairs Committee. For the record, my name is Mike Friend, and that's spelled F-r-i-e-n-d. I represent the 10th Legislative District in northwest Omaha, and I'm here to introduce and request for your support the Legislative Bill 107. I'm introducing the bill at the request of Project Extra Mile, a statewide organization committed to prevention of underage drinking. I carried this bill previously in 2003 session. It was then LB 606, I believe. And portions of it were amended by the committee into another bill. Ultimately the bill failed to advance; I believe it was in General File. LB 107 is a straightforward bill changing one word in current law, and the bill would allow the Nebraska Liquor Control Commission for secondary and subsequent suspensions the discretion to consider a licensee's ten-year history following the licensee's first suspension for a violation of selling or dispensing alcohol to minors. At present, if a licensee has a secondary or subsequent violation, the statutes allow the commission the discretion to consider their four-year history from the time of the initial suspension. A couple years ago the commission considered a licensee's entire history. Actually it was more than a couple of years ago; I believe it was three or four. But it would allow the commission to consider the licensee's entire history. To me it would seem like good policy to look at a more reasonable ten-year period so the commission might be able to better address businesses that come before them with more frequent violations. If the committee is interested in amending the bill to reflect the previous position, I guess I would be glad to entertain those type of ideas. Short of that, I guess I just wanted to say thank you for the opportunity to come here and possibly discuss this bill. And if there are any questions, I would be happy to answer them.

SENATOR FISCHER: Thank you, Senator Friend. Does anyone have a question? Thank you very much. Next we will have

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the proponents for the bill. How many of you are wishing to testify in favor of the bill? All right, please come forward.

DIANE RIIBE: Hi. Good afternoon, Senator Janssen is absent, but senators and members of the committee, my name is Diane Riibe, and it's R-i-i-b-e, and I serve as the executive director of Project Extra Mile. As Senator Friend stated, we are a statewide organization working to prevent underage drinking and youth access to alcohol. Thank you to Senator Friend for introducing the bill. As he mentioned, it was introduced a couple of years ago. We're supportive of LB 107. We believe that the Liquor Control Commission should have the opportunity to consider the past ten years of a liquor license establishment's record while reviewing that record for violations when imposing penalties. In fact, the ten-year period is reasonable and does not rise to the level of accountability imposed even on drinking drivers whose violations can be enhanced over a 12-year period. We do appreciate, however, that the Liquor Control Commission is constrained by a court decision that directed their use of the statute at a four-year period of review. We would respectfully ask this committee to support LB 107 to allow for a more reasonable approach to reviewing a licensee's record in light of the large number of license holders in the state, and that really is the issue. We have always held that businesses have every right to sell a legal product lawfully and to profit from that sale. In the case of the sale of alcohol by retail establishments, those businesses have gone into an agreement with the state of Nebraska to sell that product. They cannot sell to intoxicated people, for instance, and they cannot sell to someone under the age of 21. We have asked retailers, as we have others within our communities, to understand their role in preventing underage youth drinking, as well as underage access to alcohol. We ask them to engage in their business in a way that also provides for public health and well-being. Retailers, quite frankly, have a higher level of accountability because they have the potential for harm if they are not diligent and it is profound and far-reaching. Quite literally, we lose the lives of our children and those of our loved ones, and we have two cases specifically as I sit here before you, one in Ogallala and one in Kearney, of a direct sale to a minor that resulted in a death. The proposed change in the statute is critical

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because with current enforcement capacities it is virtually impossible to conduct checks for compliance at those licensed establishments with sufficient timeliness to even come under a four-year look-back period. In areas of the state where retail outlets are far more densely saturated, the chances of a business being checked more than once or twice in a four-year period becomes a mathematical improbability. There are anywhere from 1,300 to 1,400 licensees in the two-county Omaha area. Over the past eight years of conducting collaborative compliance checks in that area, law enforcement is able to check, on average, 400 businesses each year. At that rate it would take three and a half years to check even all of those businesses just one time. If law enforcement is constrained by resources and unable to check locations with sufficient regularity, the statute becomes ineffective and certainly the commission's guidelines for cancellation become ineffective. The very laws and policies put in place to address, as I refer to, the worst of the worst violators, will be rendered useless. It becomes, again, a virtual, statistical improbability. So, few businesses will ever have to concern themselves with being held to a four-year period for any review of any violation. They will be lucky to be checked by law enforcement even one time in that period. As a result, communities would be missing the important, consistent, oversight ability so necessary for those businesses to be held accountable at all, much less accountable to a high standard. If the statute is allowed to remain unchanged, Nebraska alcohol control policy will take a step backwards and communities will be less safe. We urge you strongly to move on LB 107 and get it out of committee onto the floor, and give the Liquor Control Commission the ability to address those violators who are reckless and put that, with that behavior, put our families and our communities at risk. Thank you very much, senators.

SENATOR FISCHER: Thank you, Diane. Does anyone have any questions? Senator Wehrbein.

SENATOR WEHRBEIN: I don't know if you know this, but do you know what percent of procurement of alcohol by minors comes from a retailer versus from another adult?

DIANE RIIIBE: There are a number of pieces of literature out there, Senator, and it is anywhere from 20 to 30 percent is

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estimated from a retail source, and the remainder is from a social setting. So both of them are important.

SENATOR WEHRBEIN: But it's about 20 or 30 percent for a retailer.

DIANE RIIBE: Um-hum.

SENATOR WEHRBEIN: Thank you.

SENATOR FISCHER: Other questions? Thank you very much.

DIANE RIIBE: Thank you.

SENATOR FISCHER: Next proponent, please.

SUSIE DUGAN: Senator Fischer and members of the committee, my name is Susie Dugan and I am with PRIDE-Omaha, Incorporated. We are an organization dedicated to preventing the use of alcohol, tobacco, and other drugs by young people. And we are in full support of LB 107, and for the same reasons that Diane has just outlined. We have been attending the Liquor Control Commission's hearings since 1988, and it's very disheartening to see that the powers are limited by that four-year look-back. We urge you to pass LB 107 and move it on to committee...out of committee onto the floor. Thank you.

SENATOR FISCHER: Thank you, Susie. Any questions? Thank you very much. Any other proponents? Seeing none, we'll move on to the opponents of the bill. How many of those do we have? If you would like to come, please?

MIKE KELLEY: (Exhibit 1) Senator Fischer and members of the General Affairs Committee, my name is Mike Kelley, K-e-l-l-e-y, and I'm a registered lobbyist for Responsible Beverage Operators of Nebraska. I'll have to...I'll get my sheet turned in here in a second. And I want to show you...we're obviously opposed to this bill, and I want to show you...and for those of you who are new, give you a little bit of the background. As you may or may not know, under current law the Liquor Commission suspends someone. Then you have a right to buy out of that suspension. In lieu of suspension, you pay a fine. So if you've got a ten-day suspension, you can stay closed for ten days, or you

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can buy out of it. That's the current law. Now, several years back, the commission decided that they needed a hammer especially for a big operator because we had Albertson's, just to use a name, a big operator, you know, a \$500 fine? What did that do to them? And...but a couple-day closure was required. So eventually we kind of made a compromise with Senator Landis, and a bill was put through that allowed for some closures. And that was only supposed to be used in extreme circumstances when you really thought you had management or ownership that was not paying attention. And so...but what has happened is the commission decided to put some guidelines in place. And, let me see, I've got them here if I could have the page hand them out. And I want you to look at these and you'll see... And by way of background, I'm an attorney; I've been practicing liquor law for over 30 years. I also own four or five licenses. And it's ironic; Diane Riibe talks about it's an impossibility to get checked very often if you are a licensee. Well, my places seem to get checked a lot. I must really be lucky. Maybe I should go buy a lottery ticket, because I get hit...my places, we seem to have no problem of law enforcement getting the places that I'm associated with. So looking at the guidelines, I want you to see how severe these are. If you are caught within the first year, if you have a suspension, you can see how severe it is. If you have a second offense within one year or two years, you are talking about a \$4,000 fine plus closure. This is supposed to be something that was never going to be used except against just very rarely. Now it's used in every case. Every time there is a second offense, it's used. Once in a while the commission will go against their guidelines, but it's very rare. I've argued with the commission frequently about that. We have a disagreement about how these guidelines ought to be interpreted, but the commission is doing what they think is right and this is...I just want you to be aware of how strict it is now. I think to give retailers a four-year window to go...if you get through four years, then you are back to a clean, to a level playing field, to a clean slate, so to speak. I think that's a good thing. I think that's something we ought to encourage. The...going back ten years, first of all, you have to understand the liquor retail industry a little bit. It's very unusual to see the same management in place for four years. Managers come and go. You have different people, different owners come and go. You don't have the same exact

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people. So to go back ten years...something happened nine years ago should have no reflection on what is happening currently. And keep in mind, these guidelines almost...well, I'm sure 98 percent...you can ask Mr. Rupe if he gets up here from the commission, how many sales to minors are compliance checks--that means law enforcement-generated or stings as they are called in our industry. How many? It's like 98 percent. So most of these fines that are being levied, hundreds of thousands of dollars of fines are being levied, are all being levied, generated through law enforcement--our own checks; not real sales to minors. And I understand there is a tragedy here and there. Somebody sells to a minor and there is a tragedy; you know, that's a different thing; we ought to deal with that on a case-by-case basis. And, again, Diane talked about 20 to 30 percent. Senator Wehrbein, I...that get it from retail, I think it's more like 15 percent. It's a very low amount. People do not normally go down and get...buy from retailers, so that's not the big problem anyway. So I guess we're trying to fix something here that's not broke. The law that's...what you have, I'd like to be in here with a bill just to repeal all of this, but I know better so I'm not going to try. But what we have now is very tough. And I represent licensees. I'm at the commission every meeting, too. And I represent licensees and they get fined and they get whacked tremendously hard. And on a small establishment...now, remember now, we're treating Albertson's...and under the law we've got to treat Albertson's the same as some Ma and Pa place. You take a small place in rural Nebraska and give them a \$5,000 fine, I am telling you that's crippling in modern day economy. So the guidelines that are in place are tremendously tough now. Four years is plenty long. This Legislature made a decision several years ago, four years was enough to go back. I mean, you have, on many felonies you have a seven-year statute of limitations, for goodness sakes. We're talking about compliance checks here. So I think a four-year window is a reasonable approach. I think going back any further than that is not necessary. Again, if it's not broke, don't fix it. I would be happy to answer any questions that you might have.

SENATOR FISCHER: Thank you, Mike. Does anyone have any questions? I don't see any.

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MIKE KELLEY: Thank you.

SENATOR FISCHER: Thank you. The next opponent, please?

KATHY SIEFKEN: Senator Fischer and members of the committee, my name is Kathy Siefken; Kathy with a K, S-i-e-f-k-e-n. I'm the executive director of the Nebraska Grocery Industry Association, and we're here in opposition to this bill today. First of all, I'm glad that Mike used the example of Albertson's, because they are not one of my members. Actually, they are not even in the state of Nebraska anymore, so. Anyway, one of the reasons we're opposed to this bill is because we have spent literally thousands of dollars and hundreds of hours training our clerks. Our association has a program that we take across the state. Some years it's ten locations, some years it's 15 locations. It's free of charge. And we train our people how to deal with minors, how to deal with aggressive people whenever it comes to age sensitive products. We take pride in the fact that our numbers have been substantially reduced and we have made a big difference in the number of sales that take place to minors. If you all recall, 20 years ago it didn't seem to be that big a deal. Today it is. And we have made a conscious change amongst all of our members to make sure that we are doing the responsible thing. And as a matter of fact, here in the city of Lincoln we work with the NU Directions, the University of Nebraska, and put together a program where we actually go in and do the compliance checks in grocery stores on sales of liquor. And we have found the last two years that we are at 92 percent compliance. That's better than anyone ever thought we would be. When we're at 8 percent noncompliance, 8 percent is still too much but the point is we're trying; we are taking this very seriously. The fines and the penalties that are in place right now got our attention. We had one small retailer that paid a fine of over \$6,000 because he made the mistake of selling to a minor. He understood that he was responsible, and they take the responsibilities very seriously. He paid the fine and he hasn't sold to a minor since then. He has had additional training in the store that made that sale. They were having trouble with turnover and it was just a bad situation. But the point is, they've taken the steps to correct that. It just seems that the better we get at stopping those sales, and the more productive we are in training our clerks and the more

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serious we get about this, the harder the antiliqor people want to hit us. And I don't understand that because I think we're doing a pretty good job. It doesn't mean that we're done working on this, but what it does mean is we're really trying, so I'm puzzled as to why we don't get credit for doing the good job that we have done. And so with that, if you have any questions I would be happy to try to answer them.

SENATOR FISCHER: Thank you, Kathy. Any questions? Senator Wehrbein.

SENATOR WEHRBEIN: This is a new area for me. Do you have any retailers that are perfect, so to speak, who have never had violations?

KATHY SIEFKEN: Yes, I do. I do.

SENATOR WEHRBEIN: Is it quite a few, or...?

KATHY SIEFKEN: Well, I can't...the reason I can tell you yes I do is because I have one of my grocers here today testifying over in another committee, and I wanted...I called him up to ask him, because it was on the age verification, and we were looking for someone that had failed one of the tests, and he hadn't failed, so I know I've got at least one of them. But the point is, nobody is perfect. And when you get the turnover that we get in grocery stores, sometimes it is difficult because you are only as good as your worst employee on their worst day. But even our worst employees on their worst day, the percentages are there. I mean, we are doing a good job of stopping those sales.

SENATOR FISCHER: Thank you. Senator Erdman has a question.

SENATOR ERDMAN: Unrelated to the bill. You said there are no Albertson's in Nebraska? There is actually one in Scottsbluff. Is that...just so you are clear on your testimony.

KATHY SIEFKEN: Albertson's pulled out of the Nebraska market.

SENATOR ERDMAN: So the one that's actually operating in

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Scottsbluff is operating...?

KATHY SIEFKEN: Will be closed, if it isn't already...if it's still open, my understanding was that they have pulled completely out of our market, so.

SENATOR ERDMAN: Okay. Just thought I would add that to the record in case...

KATHY SIEFKEN: But I'll check on that.

SENATOR ERDMAN: ...other grocers would read your testimony to make sure you are doing your job.

KATHY SIEFKEN: Okay. I'll check on that.

SENATOR ERDMAN: Thank you.

SENATOR FISCHER: Other questions? Thank you, Kathy.

KATHY SIEFKEN: Thank you.

SENATOR FISCHER: Next opponent, please.

JIM MOYLAN: Madam Chairman and members of the committee, I'm Jim Moylan appearing on behalf of the Nebraska Licensed Beverage Association, and that's M-o-y-l-a-n, appearing today in opposition to this legislative bill. You've heard a lot of the testimony. One thing I think is the number of minors that get beverages from retailers is pretty well laid out, and I think it's lower than 20 or 30 percent. There ought to be probably more time spent on educating minors through high schools, and the like, you know, than zeroing in on the bars all the time. It seems like everything comes along, it's always the bar's fault, you know, and we're the ones that take the rap and the beating and get the bad headlines, you know. But the four years has been in existence for years. I remember when it was enacted years ago. I can remember when it was enacted when they could pay a fine. It used to be you couldn't pay a fine. Now, I said before, the retailers in the state do not like to have minors in their establishments. They treasure their license. They know it's a privilege. And they just don't want to take a chance on losing their license and their business totally, so they are very careful about how they

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operate. Senator Wehrbein, I think there are a few in the state which probably have not had any violations for years and years and years, you know. Then it will depend upon the community that you live in, what the enforcement is like. And all of sudden, you know, you'll see enforcement that really gets down on them and all of sudden in one town you might have a little establishment getting three and four because of the heightened enforcement, compared to another town down the road where it is maybe a little bit more lax, you know. But they still will run into violations. I had the case about four or five years ago, and as you know, the commission has a system that allows you to send in a written waiver when they cite you. I had an establishment cited for an open container after hours. Now, if an open container is a mortal sin, I didn't learn my catechism very well years ago. And it so happened they had sent in their waiver, and they hadn't had one in about three, four, five years, a violation. They sent in their waiver, signed it, entered a plea of guilty, and then, as you know, the commission meets, has a hearing, sets a penalty, and advises them in the mail that your license has been suspended for so many days and you've got so long to pay a fine if you would like. Well, it so happened that they had had four open containers in 16 years so they cancelled their license. Well, we had to go to district court in order to get an injunction to keep them open and to be able to keep the license. And in that case, the judge said that there is indications that the four years was meant to mean, you know, that you can only go back four years when you are deciding what type of a penalty to assess an establishment at a time of a hearing on a subsequent violation. And so we just believe, and if you look through the laws, you will see that the main statute of limitations in the state is four years. You will find some that are...one or two that are five; you will find some the statute is just one; you will find some, like med malpractice is two; but the ordinary statute of limitations is four for just about anything. And we think that's a good statute of limitations on behalf of the retailers, and we would ask that you not change this procedure and we are allowed to continue in business like we have since 1935 without being threatened of being closed down. If there are any questions I would be happy to try to answer them.

SENATOR FISCHER: Thank you, Jim. Any questions? Senator

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Wehrbein.

SENATOR WEHRBEIN: I know this is a dumb question for those in the business, but I honestly don't know the answer, although I think I've heard it. If I have a perfect false ID and I come in and use it and get away with it, is the retailer responsible for a perfect false ID?

JIM MOYLAN: No, not if they follow those provisions in there. If the person looks to be reasonably old enough and presents an ID that looks valid, then I think they are immune from it. There is a section on that, and...

SENATOR CORNETT: Don't they also have to sign the book attesting and swearing...

JIM MOYLAN: Yeah, and then you have to sign the register if you have a registry, you know. And you have them sign that they are 21 and put the information in the book that they...you know, their identification signed for...

SENATOR WEHRBEIN: So they are under oath, and they are...not an oath, but...

JIM MOYLAN: As long as they sign the book; yeah. But I don't think you find a court, a perfectly good false ID that matched, you know. There isn't any way to tell whether they are minors or not. You know, if they go to another state and get a driver's license, they are 18 years old, and they get one that shows them 21 years old or some place in the mail and it looks just perfect to a driver's license and matches the state driver's license, I think they have a defense to that.

SENATOR WEHRBEIN: But there is no rigid rule, apparently.

JIM MOYLAN: No, I don't think there is. I would have to do a little bit of research on that.

SENATOR WEHRBEIN: Well, I didn't know whether to ask you or not. I didn't know who was testifying so I picked on you.

JIM MOYLAN: Yeah, I would have to look at that, but I think that's still a defense. If they signed the book, then you are definitely not responsible, you know, so, but I still

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think you would have a good defense.

SENATOR WEHRBEIN: I'll ask somebody else. I didn't know who was coming up, so.

JIM MOYLAN: Yeah, I'll have to look at that again, so, thank you.

SENATOR FISCHER: Other questions? Thank you, Jim. Any other opponents to the bill? For the record, I would like to read in that Jim Otto of the Nebraska Retail Federation has submitted a letter in opposition to LB 107. (Exhibit 2) Anyone wishing to testify in a neutral capacity?

HOBERT RUPE: Good afternoon, senators. My name is Hobert Rupe, R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission, and from the tone of some of the questions I felt I had...it would best of me to avail myself for any questions on that. The commission has taken a position of being neutral on this bill. The facts that sort of spawned our...you have a copy of our penalty guidelines where we only look back four years, whereas the case that Mr. Moylan spoke of, that was a case where the it was the Marylebone Tavern in Omaha. I remember because at that time I was the prosecuting attorney for the commission, and handled the case at the district court level, where it was their fourth offense of an open container within ten years. They had more previously but back then they were only looking back ten years by policy. There was no statutory provision for ten years. It sort of it had grown out of what was commonly called the Nancy McGinley rule, who was an older...who had been on the commission long before I was ever involved. And they sort of adopted that they only looked back ten years for the history. Statutorily, they could look back at the entire history of the licensee, but sort of to keep themselves consistent, they adopted the penalty guidelines where they were looking back only ten years and they were basically in the same format that you have before you. The different...the changes were that there was the legislation which came into effect which allowed for mandatory closure on subsequent sales to minors. And in that thing, then there was the four-year provision when it went to the district court, Judge Cheuvront said, you know, it doesn't tell you guys directly, but the way I am reading it is every indication is the Legislature has

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given you the idea that you should look back four years. So as a result of that directive from the court, we changed our penalty guidelines to only look back four years. One thing important to note is that they are penalty guidelines, and for the most part I would probably say 99.5 percent, the commission follows them pretty strictly. We found that by being consistent and fair, no matter who is coming in front of us, whether it is Albertson's or a small mom and pop bar, if they are...if it's the same violation of the act and we're consistent, that it is the fairest use of the commission's responsibilities. So beyond that, I guess I could answer any questions. I guess, Senator Wehrbein, it is funny that you ask if there is any perfect licensees. A lot of friends of mine have come up to me over the last year since I came onto this position. They go, oh, well, you probably know about my friend's bar here, in which case I have to tell them, the last thing you want me to know is where your friend's bar is, you know, because generally if I see or hear your bar has been in front of us for something bad. But we are honored to have Chairman Bob Logsdon as chairman of our committee, and he ran a liquor establishment for 40 years with no liquor violations. So there are quite a few out there which do everything above board and don't have the problems with it. So, I guess I just have to throw that in for...as an example of a good operator.

SENATOR FISCHER: Thank you, Mr. Rupe. Questions? Senator Wehrbein.

SENATOR WEHRBEIN: I would like to pursue on this. Since you said you were prosecuting, how do you look at a fake ID?

HOBERT RUPE: Fake IDs, there is an automatic provision if they, you know, defense, that if it's a fake ID that looks reasonable to the age and they go through what is generally called the minor's book. If they protect themselves that way, in other words, if it's close and they go ahead and have them sign the minor's book, it's an absolute defense. Beyond that, the commission will look at cases on a case-by-case basis. They are not entitled to the automatic defense, but the commission tries to use reasonableness when they are looking at it. One case I can recall recently where the commission found somebody not guilty was a young...was a woman who was 20, had borrowed her older sister's ID who was 18 months older, and if you look at them

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next to each other they were nearly identical. And she was using her older sister's who was 21 at the time to get in there, and the commission felt that given that fact, it was reasonable for the bar owner to rely upon that representation. They would have been better if they would have gone ahead and signed the minor's book. In that case, they didn't so they didn't have the automatic defense.

SENATOR WEHRBEIN: Thank you.

SENATOR FISCHER: Other questions? Senator Connealy.

SENATOR CONNEALY: Thank you. So you do have some violations outside of the enforcement actions. You do have some minor convictions and apprehensions, if not convictions, through regular channels?

HOBERT RUPE: Yes, we do.

SENATOR CONNEALY: But it is the majority of the violations that you get for liquor establishments selling to minors is through enforcement.

HOBERT RUPE: They are generally under compliance checks. And, honestly, I'll sort of put my hat back in here as a former prosecutor. For one main reason, they are really easy to prosecute and they are really to pass if you know what you are doing. The Nebraska State Patrol has set up guidelines which govern law enforcement utilizing cooperating minors in these compliance checks. They have to look and be dressed age appropriately. The Patrol takes photographs of them the day that they are working, so how they are looking. The only ID that they have on them is their own legitimate ID. If asked for an ID, that's the ID they give them, and they are instructed that they are not to tell any falsehoods or lies. As soon as he says, are you a minor or are you under 21, they are supposed to answer, yes, I am. Or the other way is, here's my ID. And so what's remarkable is we're still seeing perhaps a 10 percent failure rate. I think Ms. Riibe could tell you better because of the exact percentage. But that's even now with the new vertical IDs, you are still seeing people taking the new vertical IDs and still selling to minors. And those are the ones that say "under 21" until a certain date, and instead of being horizontal like ours, they are vertical and

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there are still approximately about an 8 to 10 percent failure rate even with those IDs.

SENATOR CONNEALY: But that's the vast majority of who you get?

HOBERT RUPE: That's the problem. I would have to say that that's the vast majority of prosecutions. The problems that we have in a lot of ways with what I think Mr. Kelley called them real minor checks is an example of proof. If somebody...if they go in there and they purchase a 12-pack of beer, unless they keep the receipt with them it is sort of hard to backtrack them if they are then later on stopped by law enforcement and they say, where did you get the beer at? Generally, they are not...they are going to lie. They're not going to tell you whether they are older brother got them for them; it's some guy I met on the corner. And if it was a retail establishment, they are generally not going to tell you which one did it because they probably have been buying there for awhile and they don't want to get them in trouble. So it's...you know, it's a serious problem, but one of the problems we see before the commission is a matter of proof of proving that they actually bought it from that retail establishment. Sometimes we have easy ones. We have minors walking out of the quick shops as the police officers are going in to get a cup of coffee. That's a pretty easy one there. Sometimes with the antitheft cameras end up being a way to prove it by you can see the minor going in and purchasing them and you can sometimes see them not check the ID, and so then if they are caught leaving the parking lot or something, you can prove up that they were...had purchased from that establishment.

SENATOR FISCHER: Any other questions? Thank you, Mr. Rupe.

HOBERT RUPE: Thank you very much.

SENATOR FISCHER: Anyone else wishing to testify in a neutral capacity? Senator Friend, you may close.

SENATOR FRIEND: Just briefly. Thank you, Senator Fischer. We've heard plenty of bills in this committee this year already that were more or less geared toward, in my opinion, trying to empower the Liquor Control Commission. I believe

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one of them was LB 530. Frankly, based on that, I find it a little curious the Liquor Control Commission would come in in a neutral capacity on this bill because I look at this type of thing an empowerment issue for the Liquor Control Commission; a concrete empowerment issue; something that you can verify, something that you can look at and say, yeah, we are empowering them. I don't carry bills to punish organizations and entities. If that's the way, I guess a lot of the industry feel, then they mistake my goals and objectives as a legislator. This is...to me, empowerment. If I told Senator Erdman he has got 15 minutes to go get me lunch or I'm going to rock his world, (laughter), he's got...there are some issues there. Fifteen minutes isn't much time. If I tell him you've got 45 minutes to go get me lunch or I'm going to rock your world, I've got a feeling I might get a pretty good lunch out of the whole deal...

SENATOR ERDMAN: You're not that tough.

SENATOR FRIEND: ...because Senator Erdman is inherently afraid of me. (Laughter) The bottom line is, I guess what I'm getting at is I think that this is clear-cut empowerment. If the Liquor Control Commission is an incompetent organization, ten years isn't going to do them any good. If they are half-way competent, it's going to give them a little bit of empowerment, I guess that's all I would have to say. I would answer questions if there are any. Senator Erdman looks like he has one.

SENATOR FISCHER: Any questions?

SENATOR ERDMAN: She asked if you feel lucky, but I figure I'll just wait.

SENATOR FRIEND: I don't feel lucky at all. No. Thank you.

SENATOR FISCHER: Other questions. Thank you, Senator Friend.

SENATOR FRIEND: Thank you.

SENATOR FISCHER: We will close the hearing on LB 107. The next bill on the committee's agenda is LB 108, and Senator Friend you may open on that bill.

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SENATOR FRIEND: Thank you, again, Senator Fischer. And, again, my name is Mike Friend, F-r-i-e-n-d. I represent the 10th Legislative District in northwest Omaha. I'm here to introduce and request for your support the Legislative Bill 108. I'm introducing the bill at the request also of Project Extra Mile, the statewide organization committed to preventing underage drinking. I carried this bill also last year...or, excuse me, in the 2003 session. It was Legislative Bill 604 at that time. LB 108 would eliminate the requirement that a prosecutor must prove venue of a violation for a minor in possession of alcohol. Remaining consistent with other parts of the statutes, the sole exception provided would be to allow a minor in possession of alcohol at his or her permanent place of residence. I guess as concerned citizens of our state, and officials in the law enforcement community will testify, underage drinkers are well aware of the minor-in-possession laws and how to avoid, I would say, getting caught; being in possession, if you will, of the alcohol. And based on feedback provided at the 2003 Judiciary Committee hearing on the previous legislation, along with recent input from the General Affairs Committee counsel, we respectfully offer an amendment. I've got it right here and I'll distribute it to the committee that will clarify some concerns that both of the entities have regarding the bill. (Exhibit 3) The amendment states that the minor must exhibit evidence of consumption of alcohol and that the evidence is displayed through voluntary testing or observation. Adoption of this bill, along with the amendment provided, will close a loophole presently, we believe, in our statutes. I would just say thank you for the opportunity to come and address this issue with you today and I'd be happy to answer any questions.

SENATOR FISCHER: Thank you, Senator Friend. Any questions? Thank you very much. Next, we will have the proponents for the bill, please.

MARTY CONBOY: Good afternoon, Senator Fischer, members of the General Affairs Committee. My name is Marty Conboy, C-o-n-b-o-y. I'm here from the city of Omaha, also

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representing the Nebraska County Attorneys Association, and as a member of Project Extra Mile, urging your adoption of LB 108. What Senator Friend said is correct. I speak at schools throughout the state and have dealt with minor offenders for 25 years. And I can tell you that they are keenly aware of how this law and other laws affecting drinking work, and will tell you that they are aware that there is a huge loophole in our enforcement in this state. We tell kids that it's illegal to consume alcohol, and yet they know full well that if they are not caught consuming or possessing it, that they can't be prosecuted. And the reality is, when kids are found, they are usually in a vehicle, at a party sitting around a keg, and unless the law enforcement officers can actually see them drink it or possess it, and hold it, have control over it as the statute says, even if they are falling down drunk, there is not much the officers can do about it. And the kids are aware of that, and so right away they'll say I drank at home or I drank in Iowa. And you can't prosecute. The judges can't convict. And it's dangerous in the sense that...I think there are two problems. One is, kids are treated differently, and as a prosecutor that always bothers me when the same conduct results in different results. The same kids at parties, some will be arrested and some won't. It just kind of depends. The red-headed, freckled kid who the officer could say I saw that kid when we walked in the door; he had a beer. But the other kids, they can't remember. And that is an actual scenario, that it's...the kid's parents call and say, hey, he was with his buddies; two of them got tickets and three of the didn't; how did that happen? Well, it's because the way our law is worded and the kids are smart enough to know that. And what this would do is it would at least the officers the opportunity, with the cooperation of these kids, to determine whether or not these kids had been drinking. If they are sitting in front of a keg, there are glasses everywhere, and they show signs of having consumed alcohol, that ought to be something that the officers and the court could take into consideration. It doesn't mean they are automatically guilty. There is still a trial; there is still the burden of proof on the state to prove that they have this alcohol in their system, either through measurement or some observation which the young people would contribute to. I would point out the reason we don't want minors consuming alcohol in our state isn't because we're jealous or we're trying to keep it from

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it for some reason other than their own safety. We recognize that it has been pretty obvious for many, many years that when young people drink, their judgment is impaired, and some people would say it starts out impaired anyway. But at least it makes them more dangerous. The things that kids suffer from, accidents, traffic collisions, suicides, crime victimization, crime commission, all are increased dramatically when they consume alcohol. And it doesn't matter where they drink. Whether they drink at home, whether they drink at somebody's house or party doesn't really matter. The fact is, if they are out there in the community at a place other than their home, they face the same dangers whether they drink at home or in Iowa or anywhere else lawfully. This came up at the Judiciary Committee the other day. A discussion of another issue involving underage drinking came up where it was asked about kids who would drink somewhere and how unfair it is that some can drink at religious ceremonies or at home, and others can't. This bill would level that playing field, as well. It would say that if you do drink at home or anywhere else, and you are out driving around or out roaming around and you are caught in public, and have consumed alcohol in the places enumerated in the statute, that you face the possibility of arrest. And this will be a deterrent for young people. They do know how these rules work. They do understand the difference in the law and will govern their conduct accordingly. It is directly related to safety of these kids and to justice in the sense that it would be fairly distributed. This bill was introduced in a format a few years ago where it talked about presumption. I can understand that the problem with presumption. The burden should be on the state and that presumptive language has been removed from this particular statute. There has been discussions in the past before this committee of getting away from that idea that kids can drink legally at home, and that is a fairly old and, I think, important concept in our law. I've got a kid in the military. You know, you get a kid who is 20 years old and comes back from military service somewhere and wants to have a drink watching the football game, we're not talking about that situation. But if that same kid later on that night is out driving around, then a parent who has and does allow a kid consumption of alcohol in the house should also tell that child you don't go out and roam around the community having consumed alcohol. And I think it's a matter of public policy. This law would at

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least allow law enforcement to take action in those kinds of cases. We do about, oh, 2,000 MIP cases a year, and it is very difficult to deal with the inconsistencies in result, and in those cases in the courtroom where the judges are frustrated because the facts seem clear. But we need to have proof beyond a reasonable doubt. This, I think, will make it clearer to everyone and hopefully will govern the behavior of these people who we're trying to protect. I'd be happy to answer any questions.

SENATOR FISCHER: Thank you, Mr. Conboy. Any questions?
Senator Connealy.

SENATOR CONNEALY: Thank you. Is this...have you seen the amendment that...

MARTY CONBOY: I am aware...I had heard that it was coming to talk to Senator Friend.

SENATOR CONNEALY: "Minor exhibits through voluntary testing or observation, evidence of consumption of alcohol." Is that tight enough? I mean, we're still...I'm still worried that we're not tight enough with that we're talking about so that we...so they don't have "gotchas" and people going through this. Are we talking about zero tolerance and evidence of consumption of alcohol for your 20-year-old that...? I just want to make sure that we're doing it right; that we make sure we don't...in trying to improve this because I think there are loopholes that one kid gets it and another doesn't. I've even seen where parents will hold their kids accountable and other kids that aren't get out of the loophole because there wasn't any observation. So I want to tighten it up but I want to do it in a way that works. It seems to me that this is pretty ambiguous.

MARTY CONBOY: Well, the idea of voluntary observation or testing, in this particular case I guess it's a matter of public policy whether you want to compel kids to have to submit to a test. Normally, the observations are pretty apparent. I mean, you...I think everybody has experienced where you see somebody who has got obvious signs that they've been drinking. And if the officer can... And they are trained to do it. If they can relate that to the court to the extent that the judge would find that that's evidence, then the state would win. So it still leaves the

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possibility or at least the burden that the state has to prove it. But I think it's enough that it would give us the opportunity, and that's what we're looking for again. This isn't...the problem with that presumptive language some argued that, well, you can't just automatically find somebody guilty; there has to be a burden of proof. And I think that's fair. This language will give us the ammunition we need to get the case into court and at least have our day in court fairly so all the kids will be treated the same. I don't think the amendment will water it down.

SENATOR FISCHER: Any other questions? Senator Wehrbein.

SENATOR WEHRBEIN: I've got to go here. Just so I understand, you're at a party with a lots, and let's just say you're even college, let's don't even go to high school, and half are and half aren't, which is not uncommon at all, drinking. Now, will you charge the half that haven't drunk? If..and then the next step is can they take a test to prove they haven't?

MARTY CONBOY: It would require, first of all, that the officers would have to find evidence that they have either consumed or show signs of it. The way that the enforcement is done, first of all they have to identify how old they are to make sure that they are under 21. Those who aren't, are typically asked, have you been drinking? The ones that will admit it or have been caught red-handed, literally, will be identified. And the other kids then basically have the opportunity to take a test, and that's training that we've had with law enforcement throughout the state and we've done it for years, that obviously we don't want to waste time or the time of people who are innocent. And if they can demonstrate it, it's in everybody's best interest, including law enforcement, to say step up here, let's take a look at you, blow in the machine if we have one, and you are going to go home; you have...you've done the right thing here. And we've never had a problem with that. What this would do is then those kids who do show that they have been drinking and show some signs, the watery eyes and the slurred speech, and so forth, then the officers, assuming they are under age, would ticket them and have to document the facts for a judge to make a decision on.

SENATOR WEHRBEIN: In the past, the reason I ask, I've been

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told that you are guilty by association in many cases, but that isn't necessarily...

MARTY CONBOY: No. Law enforcement officers, first of all, are trained to identify somebody who is innocent. And, again, we encourage these kids not to drink. It is, as you pointed out, pretty common. And the...of course, the judge is the final arbiter of that. But the officers have to dictate in the report what they saw and what they relied on; whether it's a failed test or those observations. And if they are not there, as I say, it...just as a practical matter, the officers appreciate it when they can just send these kids home because they've got so many to deal with.

SENATOR WEHRBEIN: And maybe this isn't the time, but I guess I'm going to ask it anyway. Is it...would it be wise for parents to tell their kids to ask for a test if they get caught in those situations?

MARTY CONBOY: Absolutely.

SENATOR WEHRBEIN: I wasn't aware of that but that would be a wise thing, wise consult for a parent.

MARTY CONBOY: Absolutely. And I think it also encourages the kids that that is the right thing to do, and if you are not doing anything wrong then you are not going to be punished. And, you know, that's I think a sign of fairness when...I guess I read once in law school that our philosophy of law is that we would rather see 100 guilty people go free than convict one innocent person. And convicting somebody who is innocent is obviously a horrible breakdown of the justice system, so we all work hard to make sure that doesn't happen, and that's why we train that way.

SENATOR WEHRBEIN: Thanks.

SENATOR CONNEALY: One more.

SENATOR FISCHER: Other questions? Senator Connealy.

SENATOR CONNEALY: Going back to the testing, when...with a minor we had zero tolerance, so does...if the test shows any percentage of alcohol, then that would be a level, or you're...at some...do you see this...is that the way you

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would prosecute it, or...?

MARTY CONBOY: Yes. The zero tolerance would be at least enough to get you into the courtroom. Now, if the kids came in, I suppose, there are, I suppose, if it's just an extremely infinitesimal amount of alcohol, they could show that they had taken some medication that has alcohol in it, a cough syrup, for instance. We've done testing, and I know there are studies about that. There are...normal doses of any medication will not have enough effect on your body to have a measurable effect. It is just not enough alcohol. But even at that, they would certainly have the opportunity to raise that defense. So in answer to your question, yes, it would zero tolerance.

SENATOR FISCHER: Senator Cornett.

SENATOR CORNETT: It was my experience that when we did this on the department, that we would administer an AlcoSensor test which is not admissible in court for a DUI. Are you referring to say, requiring them to submit to a test, a DUI or an Intoxilyzer?

MARTY CONBOY: No, just the AlcoSensor, a preliminary test that you are referring to. And, again, that is primarily used as a screening device to...

SENATOR CORNETT: So you wouldn't even take necessarily into account their reading, just the fact that they tested for alcohol and then showed other signs of intoxication?

MARTY CONBOY: Correct. It would really just be a pass/fail kind of a thing where, again, as Senator Wehrbein pointed out, you would want to know if somebody tests zero, then they are done.

SENATOR FISCHER: Other questions? Thank you very much.

MARTY CONBOY: Thank you, Senator.

SENATOR FISCHER: Next proponent, please.

DIANE RIIBE: Good afternoon, again, senators. My name is Diane Riibe, R-i-i-b-e, and we're here in support of LB 108. And I won't go over the arguments. Marty did a really good

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job of presenting it. But what I will share with is Nebraska has, as you may well know, a problem with underage drinking. About 78 percent of our young people indicate by the time they leave high school that they have consumed in some fashion. Our young people particularly have a high rate nationally of drinking and driving, riding with a drinking driver, and binge drinking. So those are issues that are always of concern. This is an attempt to simply close a gap or a loophole in the law. I think everyone would agree that we want to make certain that the law, the 21 law, which is really seen as the most effective public policy for savings the lives of kids, estimated by the National Highway Traffic Safety Administration to have saved as many as 22,000 lives since the mid-80s when it was initially enacted at a federal level. And so the attempt is really just to make that 21 law effective, and there are some real problems with what is out there right now, and it's important that it be addressed. I don't know that anyone would say we or anyone has a silver bullet, but there is a real need to say what can we do to make it better because there is a lot of gaps right now. And I don't know that anyone, particularly in a policy situation, would want to facilitate the consumption of alcohol by young people, and that's frankly what the law almost encourages at this point. So we would ask for your support and be happy to answer questions.

SENATOR FISCHER: Thank you, Diane. Any questions? Seeing none, thank you very much.

DIANE RIIBE: Thank you.

SENATOR FISCHER: Any other proponents, please?

SUSIE DUGAN: Senator Fischer and members of the General Affairs Committee, my name again is Susie Dugan, D-u-g-a-n. I am here representing PRIDE-Omaha, Incorporated, an organization dedicated to the preventing the use of alcohol, tobacco, and other drugs by young people. And I won't repeat any of the testimony either. I just want to remind you that alcohol is still the number one cause of preventable death and injury among our young people here in Nebraska. I can't believe that anybody in this room doesn't know somebody that's been severely affected by alcohol consumption by young people. And the solution includes a

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lot of different addresses to all of the different ways that this is caused, whether it's the person who is selling alcohol to a minor, whether it's the parent who thinks it's okay to allow parties in their home. We have to look at all of the reasons that we have this huge problem and we have to address it. This is one of those that could help by holding young people more accountable, closing that loophole in the law, and I urge you to support LB 108.

SENATOR FISCHER: Thank you.

SUSIE DUGAN: Thank you.

SENATOR FISCHER: Any questions? Thank you. Other proponents, please?

JIM MOYLAN: Madame Chairman, members of the committee, I'm Jim Moylan, appearing again on behalf of the Nebraska Licensed Beverage Association; that's M-o-y-l-a-n. We're here supporting this bill. It's been in a number of times in the past and we've always supported it. I think, as I said before, the retailers do not like to have minors in their establishment and they don't think minors should drink. This would be a good step in preventing that. There are a couple more bills floating around here and I think they are being held Thursday, which I think would have a big impact on minors, and I hope everybody here today supporting this would support those bills. And one of them is to suspend the driver's license of a minor for any liquor violation, driving or not. Now, they treasure their driver's licenses. And the other one is to allow a retailer to detain a minor until law enforcement arrives and also to confiscate their ID if they should have a minor in their establishment. They will be held later. But they are all a part of a program I think you know to get to the minors drinking problem. I suggest that you advance this to the floor and maybe pass it this year. Any questions, I would be happy to try to answer it.

SENATOR FISCHER: Okay. Thank you, Jim. Any questions? Thank you very much. Any other proponents? I do have a letter here from MADD, Mothers Against Drunk Driving, from Ms. Reynolds, the state executive director in support of LB 108 that will be entered into the record. (Exhibit 4) Are there any opponents to the bill? I see none. Any

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neutral testimony?

JEFF HIX: I actually came originally planning for LB 430, but this has caught my attention so please forgive me if I am not quite as organized as our other people here. My name is Jeff Hix, that is J-e-f-f, last name is Hix, H-i-x, and I'm a private citizen. I don't represent any organization or any...just my thoughts. One of the things, and I emphasize that purely because what I'm going to say may give you a different impression on LB 108. What I do a lot right now is I take care of my parents, so in order to make any income at all and do that, I do odd jobs. What I do sometimes is called quality control in the retail industry. Now, obviously my grayer hair says I can't go do spot checks for the subject we're at hand today, but I do encourage young people to take those assignments when they are available. The assignments I'm talking about though are not done by law enforcement, therefore the kids don't have the same protections as the law enforcement arrangements. Some retailers do take this very seriously as a subject. And therefore they contract with third-party companies, therefore nobody in management at the local store knows what is going on, and the third-party companies in turn contract for these spot checks and recruit young people to do this with parental supervision. There are some checks in the way that this is done from the professional end of it. What I don't see in the bill and I'm not aware of, and I'm saying not aware of but I'm not going to tell you it doesn't exist, is some type of provision that would, with proper paperwork, i.e. the e-mail contract from the third-party company in the minor's possession for evidence for the officer, and similar safeguards that nothing in the car in terms of the liquor can be opened. If it is opened, that's a violation; that should be prosecuted, on there; and the minor if there should have a hit, which is simply a purchase in which they don't want, the merchant is trying to make sure their employees are in compliance, but if there is a purchase where the employee failed, that is a reported in a reporting process that does exist that is in the quality control arena rather than the prosecutor and law enforcement being involved. In that scenario, the minor would be in possession of the substance to take it home to photograph and provide evidence. I would like to see some type of provision that protects the subcontractor minor provided with limitations that they comply with the liquor

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transportation. The liquor is not opened and that they just...if it is consumed, it's consumed in the home and compliance with the existing proposed laws. But I would like to see something protect these people who are trying to help the merchants check on their employees to do the same thing as the law enforcement spot checks. And that's basically what I am trying to suggest to the committee as an additional idea. It's not in the bill currently but it is an idea that I would like to put in front of you.

SENATOR FISCHER: Okay, thank you, Mr. Hix. Any questions? I see none.

JEFF HIX: Thank you.

SENATOR FISCHER: Thank you very much. Any other neutral testimony? Senator Friend, would you like to close, please? Waives closing. With that we will close the hearing on LB 108. Our Chairman is back and so I will turn the rest of the hearing over to Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Fischer. LB 430 I believe is the next bill. Senator Cornett. May I see the hands of...before Senator Cornett opens, the hands of those proponents of this bill? One. Opponents? Okay. Two a piece. Okay. Senator Cornett, tell us all about LB 430.

LB 430

SENATOR CORNETT: (Exhibit 9) Good afternoon, Chairman Janseen. My name is Senator Cornett; it's A-b-b-i-e C-o-r-n-e-t-t. I represent the 45th Legislative District and I'm here this afternoon to introduce LB 430. The premise behind LB 430 is a simple one: to extend the time when bars can stay open in Nebraska to 3 a.m., and to also allow keno games to be played until 3 a.m. I am offering an amendment to the committee that would substantially rewrite LB 430 so as to allow certain licenses, Class CC licensees to remain open till 3 a.m. The licenses could only be issued after an affirmative vote of the municipality where the license would be located. The cost of the license would be \$2,500 and is substantially higher than the current Class C license. The reason for the large price tag of the license is twofold. First, so only those who are willing to

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make significant investment into the security of the facility are going to apply for licenses, and second, so these licenses are rare and scarce. Not every liquor store or licensee is going to go out and apply for one of these licenses. The reason for introducing this bill is Nebraska is a state with one of the 50 most populated cities in the country to have a closing time that is earlier than 1 a.m. If we are going to market Omaha and its surrounding areas for travel and tourism and conventions, then we are going to need to give attendees a reason not only to come to Omaha but also a reason to remain on the Nebraska side of the river. Casinos are doing a terrific job of marketing their facilities to conventions which could come to Nebraska. As a person who has worked many 4-to-midnight shifts, it would be a good way to keep people in Nebraska. Many may want to have a drink or even just a place to go after work to unwind or to meet with friends. They either have to rush to get to a bar in Nebraska and drink faster, or to go to Iowa which has a later closing time and not to have to drink as quickly. Many people also just want a chance to dance and have a good time until later hours, not necessarily just to drink. I would be happy to answer any questions.

SENATOR JANSSEN: Any questions? Seeing none, all right. We'll take proponents first.

THOMAS WHITE: Good afternoon. I am Thomas M. White, W-h-i-t-e. I am an attorney and my business is located in downtown Omaha. My home is about ten minutes away from downtown Omaha. I can fairly to say that I have significant investments in the area of the state most likely to be affected by this bill. I do not represent any bars. I do not own any interest in any bars. I am suing a couple of bars, but that is unrelated to the problems we have here. (Laughter) I also find it pretty ironic that somebody who has trouble staying awake for the ten o'clock news is speaking on behalf of a 3 o'clock closing, but there you go. I will tell you why I am for it. I was a partner in one of the largest and oldest firms in the city until my father retired off the bench and we started the firm we have now; we have about ten employees. And I had to recruit. We had partners from Harvard, Columbia, NYU, Stanford, all over the country, and we would try to recruit the best talent available to come to Omaha and live in the city when I was doing that recruiting. And we had a very difficult time,

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and one of the reasons we had a difficult time is the perception that there was no there there; that it was not a city. It's funny because it's a song, but there is a reality it conveys about young people, and that's the song "New York, New York"; it's a city that never sleeps. And if you want to recruit a certain level of professional who has the talent to be sought after by other cities, one of the things they really look for is a true urban experience. A part of an urban experience is literally a city that doesn't sleep. Now, that's not for everybody. It's certainly not for me at my age. But for a lot of the people it is. And whether they are coming in on a convention or whether they are a computer expert who is looking for a job, and whether or not he wants to go to ConAgra or FDR, it can matter. I think this is one of the things that won't cost the state anything. It can get out of the way of helping Omaha to become a 24-hour city and that's why I support it. Thank you.

SENATOR JANSSEN: Any questions of Tom? Seeing none, thank you for being with us. Next proponent, please.

MIKE KELLEY: Chairman Janssen, members of the committee, my name is Mike Kelley, K-e-l-l-e-y, representing Responsible Beverage Operators of Nebraska. I've got another handout for you. (Exhibit 5) And what this is, is an article from The Arizona Republic that was, oh, it was about a year old. And a year ago they were having this same debate, and it was pointed out in the article that Phoenix, Tucson, and Mesa, outside of Omaha, were the only...were the last remaining cities of the top 50 that didn't have at least a 2 o'clock close. And the bill says three. Obviously we would be delighted with two, but you dream high. It would be fun to have an advantage over another state, for once, instead of always being behind as a Nebraskan. But you are going to hear...you probably will hear some arguments, oh, it increases the increase of potential of damage of accidents and so. That's not what this committee found. They advanced this to the floor and it's now 2 o'clock in Arizona. One of the things...and Tom White, I thought, hit it pretty good...one of the things you have when you are trying to... Years ago, I used to be on the...I was a county commissioner, and we tried to recruit...I was part of the convention bureau recruitment effort, and we would go around the same thing. When you talk to people that are

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going to bring a convention, they kind of want to look, what is your city like and what time do you roll up your sidewalks, what time do your bars close. And if you say one and Salt Lake City, Utah, is open till two, it hurts your image. And it is something that, again, I think would be a tourism tool and the amendment that Senator Cornett has offered...and we thank her very much for bringing this bill at our request...is that you would have a special license created, and it would be an expensive license. It would cost almost ten times what a normal licenses costs. A normal licenses costs about \$770; this would cost about \$7,500. Five thousand of that money would stay in the local city; \$2,500 would go to the state. The reason for that would be, so that, number one, not everybody would take advantage of this. You wouldn't have this really in every bar across the state. You would probably have it in 20 to 30 places in Omaha, to be honest with you, if Omaha did it. Or you might have it in Sarpy County, some larger communities right across the border. Now, I don't know each community would do, but that's up to them. And if they pay that much for it, they will pay attention to the type of security they have to the way they operate. And, again, this committee made up of older folks, and I am one of them, and we...I'm like Tom, 10 o'clock I'm...if I make it through Seinfeld, I'm delighted. So it's not for me; it's not for you. But it is the younger people, they dance to a different drummer and they have a different system. They don't...they want to be out. You know, they come...especially in the summertime, we have daylight savings time; they don't come out to nightclubs and stuff until 11 o'clock at night. So...and then they are...right away, they are thinking about casinos; go across the river. So we obviously have decided as a state not to expand gambling. We could at least offer our entertainment venues the opportunity to at least compete this way. And, again, it's not something we're cramming down anybody's throat. It's optional. If Omaha doesn't want to do it, they wouldn't have to do it. Any other community in the state could take advantage of it or not as their governing body did. Again, the reason we put a high, expensive fee on it, and maybe the committee doesn't want to do that, but we felt that would control it automatically. Just the dollars alone would control it, and that answers the biggest thing. This bill has been around for several years in some form or another. The biggest question always is law enforcement;

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what will it do to law enforcement? Well, this will pay for the expense of any law enforcement. And, again, it limits the number of that can take advantage of it. I was hoping to maybe have a resolution from MECA, the entertainment board there. They have a policy where they don't take positions on legislation. I have talked and I'm hoping I'm going to get letters from most of the members of that board, though, encouraging you to pass this. Several have committed to that. I don't know that they've done it yet, but I believe they will. Again, this is something that it won't help everybody but it would help some of us, and it helps...you would be amazed when you are recruiting. Just like Tom said, when you are recruiting the image that you portray is important. And I think again it's a tool to allow our hotel and our tourism industry to compete. That's really what we're talking about. And, again, we would gladly to accept an amendment at 2 o'clock. I'm here for another questions you might have.

SENATOR JANSSEN: Any questions? Seeing none, thank you, Mike, for being here.

MIKE KELLEY: Thank you.

SENATOR JANSSEN: The next proponent?

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, appearing on behalf of the Nebraska Licensed Beverage Association; again, that's M-o-y-l-a-n. We're here in support of this bill. Over the last 15 to 18 years I have requested a 2 o'clock closing bill be introduced, and it's been introduced for a number of years, you know. And I had a map that showed the surrounding states and what their closings were, but after 15 years my map wore out. I will get another one ready before next year if we need it. But anyhow, 53 percent of the population live in the border counties in this state, and on every one of those borders there are 2 o'clock closings. Of course the biggest problem is on the eastern side of the state, which makes it easy for 53 percent of the people if they don't want to close, go home at a closing time, they can just go across the border and stay there until 2 o'clock in the morning. I used to have a client down on South 13th Street in Omaha--a fairly good business. But come about 11 o'clock, all of sudden they decide to leave and they would head to Council Bluffs

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because they could stay over there until 2 o'clock in the morning. And that was very disconcerting to him, and he came down here a couple of times over the years to testify in favor of the 2 o'clock closing. Now, we would be amendable to 3 o'clock or 4 o'clock if you are going to have a higher priced license; we would buy that too. Not everybody would accept it. I think the important thing is, this goes back to you are just extending the time. It's up to the local subdivisions whether they want to buy it or not. A lot of them might not. But the other thing is, you will find out a lot of retailers throughout the state, even in Omaha, but in the smaller towns, they don't even stay open until 1 o'clock, so there are just certain areas that it would accommodate. I had the one in for 2 o'clock closing during daylight savings time that was requested from a retailer out west a couple years ago, which is another suggestion. Even if it was during daylight savings time, it would help, and many options. But somehow we've got to extend that time to move into the twenty-first century and keep up with the states surrounding us. Any questions, I would be happy to try to answer them.

SENATOR JANSSEN: Questions? I don't see any, Jim. Thank you. Any other proponents? I see none. Opponents? Step right up, sir; step right up.

JEFF HIX: I don't see anybody else jumping up so I will.

SENATOR JANSSEN: No, it doesn't look like it.

JEFF HIX: Again, my name is Jeff, J-e-f-f, last name is Hix, H-i-x. I am a private citizen. I don't represent any organization. And this one, when I made the papers, it sure got my headlines the wrong way. As my gray hair tells you, I've been in the working force for many years and I've done a variety of different jobs over that time. One of them was a taxicab driver. And therefore I used to be involved in the transportation of people who want to go get that drink over across the river. I would also be involved in transporting people at various times from the bar of their choice to their home or hotel at any hour. Therefore, I have dealt with the people who are going to, so-called, benefit or enjoy this law. I can tell you that they get enough to drink already, number one; number two, those that do race across the river with this bill at 3 o'clock are

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going to try and, what race them back to us? Then they are going to have to get home again. I can tell you the taxicab driver, most of the taxicab drivers serve the 1 o'clock crowd and then they go home and a lot of them get back up again at 5 in the morning to get the morning rush to get somebody to the airport, so therefore you've got safety issues with the people who are there. I would suspect very strongly if anything has not changed in the taxicab business, that it is going to be even more difficult for somebody when the bar closes to get them out of the bar to get them home. It is just supply and demand. The taxicab drivers are, in most part, at least in Omaha, are independent contractors; or at least they were when I was in the business, and therefore they go home when they want. And if they get tired, they go home if they are smart. If they...generally speaking, not that many of them like to work graveyard. I was a "graveyarder." I enjoyed graveyard activities, and so forth and so on, and I enjoyed the grocery stores being open until midnight because I can at 3 o'clock in the morning and get some nice, quiet shopping. This is a bad bill and bad policy, and as far as I'm concerned it is a very strong negative to Nebraska, the good life. I can't see a positive to it at all.

SENATOR JANSSEN: All right. Any questions? Seeing none, thank you for being with us today.

JEFF HIX: Thank you, sir.

SENATOR JANSSEN: Any other opponents? Opponents?

SUSIE DUGAN: Senator Janssen and members of the General Affairs Committee, my name is Susie Dugan, D-u-g-a-n, and I am again representing PRIDE-Omaha, Incorporated. We have opposed the extending of the hours each time it has come up and we will do it again this time because we know that the research shows that the more you increase availability of alcohol, the more consumption and the more problems that you have. And for that reason we are opposed to it.

SENATOR JANSSEN: Okay. Any questions of Susie?

SUSIE DUGAN: Thank you.

SENATOR JANSSEN: Seeing none, thank you for being with us.

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Any other opponents? Anyone in a neutral capacity? Okay.

DIANE RIIBE: Hi, Senator Janssen, members of the committee. Diane Riibe, R-i-i-b-e. Our board has discussed this bill at length and has not taken a position, but I just wanted to share some of my experience and some of the issues that you all may want to consider as you look at it. As a state, we would never be able to match kind of consistently the states that surround us. That is just not going to happen unless there is a federal kind of requirement. So that's a given. But within this state, the traffic safety implications, as well as the public health implications, really bear upon the differing closing times so that really would be the consideration that I think those in public health might be paying attention to. It's not that there would be a change in the law; it would be that there would be a change in the law that would allow for inconsistencies from the city of Omaha to Elkhorn, should they remain, and some of those other communities. So those really become kind of the primary issues.

SENATOR JANSSEN: Any questions? Thank you. Anyone else in a neutral capacity? Neutral? Neutral? There we go.

HOBERT RUPE: Good afternoon. My name is Hobert Rupe, R-u-p-e. I am the executive director of the Nebraska Liquor Control Commission. And I think I, since I was here, I would just come forward to see if there any questions as...that I could answer that the senators might have.

SENATOR JANSSEN: Any questions? I don't see any, Hobie. Oh, oh, there we are.

SENATOR FISCHER: Mr. Rupe, the last person who testified made the comment that she felt that the change in the law would cause inconsistencies between localities. What's the problem with that? If you have Omaha that is going to have establishments opened until two or three in the morning, and Lincoln that decides to close at one, what's the problem? If somebody is going to get in a car and drive, they will be picked up anyway.

HOBERT RUPE: Well, I think that would be...that's the fear, I think, that people would have if you have inconsistency, you might an increase in drunk driving. One thing that's

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important to realize right now is that even under our current law, localities can be more restrictive than the state is anyway because there are some places which have midnight or 11 o'clock times for their bars. Some places which don't allow certain Sunday sales. That's part of the...in the act already, so there is somewhat of a variation anyway. The...if..and I'm sorry, I totally forgot to bring a copy of the amendment which is actually what the bill is, with me. As you are aware, as of May 1 we are only going to have five classification of license anyway, of retail license: A, B, C, D, and I. I know there should be an E but there is a reason why we didn't do it that way. And so this would basically making it a super C, from my understanding is you would have to already be qualified to have a C class license. The C class license is what we sort of say is our full-service license. It allows both on- and off-sale beer, wine, and liquor. So I think...and those current costs are going to be after May 1 are going to be \$300 for a licensing fee. One thing that you have to remember is that the local governing bodies can charge an occupation tax up to twice the licensing fee, so if I have a Class C license and my local town charges the max, I'll be paying \$900 just for an existing C. It's my understanding that these CC's or these super C licenses would be somewhere in the neighborhood of \$2,500. I could be wrong on that. So you have to recognize that they are going to be a very expensive to get ahold of.

SENATOR JANSSEN: Any other questions? Seeing none, thank you.

HOBERT RUPE: Thank you.

SENATOR JANSSEN: Anyone else in a neutral capacity? I want to read into the record the Nebraska Retail Federation is in support, a letter in support. And I had one from MADD but they had someone come and testify so I won't read that into the record. (Exhibits 6, 7, and 8) Senator Cornett to close?

SENATOR CORNETT: I want to thank the committee for the opportunity to introduce this bill today. The primary thing to remember when voting on this is that it gives the local control to the municipalities. I know that inconsistency was brought up, but as Hobie testified to, inconsistency in

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the laws already exist in the state of Nebraska. One other point that I wanted to bring up is from the research that we've done there is no statistical data that shows that alcohol offenses go up with later closings, and I believe that Mr. Kelley handed a handout to that effect on that, but I have more in my office if you want to look at that; I can run copies of that for you. And then to answer any questions you might have.

SENATOR JANSSEN: Any other questions? Senator Friend.

SENATOR FRIEND: Thanks, Senator Janssen. Senator Cornett, I wanted your, I guess I would consider it expert opinion on this. When I was in college, when I was in college in Omaha a long time ago, we don't even need to go there, it was a long time ago, at least it feels like it, we used to...and I'm certainly not proud of this, but my friends and everybody, we...12:45, 1 o'clock, we head cross the river. Okay, now,...no, there were no boats though...

SENATOR CORNETT: Just bars.

SENATOR FRIEND: Now,...and those were college kids doing, in my opinion, stupid things, and I did plenty of stupid things. The bottom line to me, though, is now you've got two, three, four casinos over there and you've got adults racing across the river now possibly. What kind of resources would OPD run in to...what kind of resource issues do they run in to now at that time of the evening, and would some of those resources' issues be alleviated if people weren't racing or trying to...attempting to get across the border?

SENATOR CORNETT: Well, I can tell you from personal experience, the Old Market was my foot patrol for two years, and at about 11:45 you see all the college kids, and even the older, the adults, start literally fleeing the Market and racing across the river. Then at about 2:15, 2:30 in the morning, you have a large flow back over the river into downtown Omaha and the bridges.

SENATOR FRIEND: So I guess my...and so you...I think you would agree...

SENATOR CORNETT: I feel that this would...

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SENATOR FRIEND: I think that we...

SENATOR CORNETT: I feel this would stop a lot of that back and forth traffic.

SENATOR FRIEND: It could alleviate some of that. There is potential to alleviate some of that. But I guess what I'm wondering is, does it seem since the inception of those river boats that you've got a different type of clientele...
SENATOR CORNETT: Yes.

SENATOR FRIEND: ...moving across the river as opposed to a bunch of Creighton and UNO students and whoever...

SENATOR CORNETT: Yes.

SENATOR FRIEND: ...making a beeline.

SENATOR CORNETT: You have a lot of older people now also doing that.

SENATOR FRIEND: Thanks.

SENATOR CORNETT: And the thing that you have to realize by staggering the closing times, because not everyone is going to get one of these licenses, you are going to have fewer people leaving bars at the same time so you are not going to have such a rush. You will have bars that close at one, so part of the people will leave, and then you would have bars close at three, and then the other people would leave. So you are not going to have as many people on the road at one time.

SENATOR FRIEND: Thanks.

SENATOR JANSSEN: Any other questions? All right, thank you, Senator Cornett, and that ends the hearing on LB 430. I see Senator Johnson is here, and he's going to tell us all about LB 668. Welcome to the General Affairs Committee, Senator Johnson.

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SENATOR JOHNSON: (Exhibit 10) Senator Janssen, members of the committee, I'm Senator Joel Johnson, J-o-h-n-s-o-n, representing the 37th District. I believe at one time, shortly after I was appointed, I was a member of this committee.

SENATOR JANSSEN: You certainly were.

SENATOR JOHNSON: It didn't last long. It was kind of funny hearing Senator Friend talk about that when he went to college was a long time ago. I was there 50 years ago and it doesn't seem like any time at all. Well, what we're here to talk about today is LB 668, and what this is, is it's a land transfer from one branch of the state system to another. There are two methods of transferring land. One is outright sale at market value and the other one is by law. Now, what we're talking about is some land that is administered by the Youth Rehab and Treatment Center--Boys Training School to a lot of us that have been around for awhile. The Boys Training School, or YRTC as its known today, is the administrator who actually owns this land, and it's a cornfield, is HHS. And the rent that they receive from a farmer for this land is about \$36,000 per year. I checked with both HHS and the Department of Administrative Services in regard to the transfer of this land. What UNK is interested in doing with this land is, first of all, you might recall that there is a Safety Center that frankly is in quite bad disrepair at this point in time. And I think this is what triggered the idea of acquiring this land, but it's gone beyond that now and they're talking about the potential for a tech center in conjunction with a private enterprise, as well. But I think that those are just hardly in the planning stages at this time. Now, there...what we have here, I guess, is this, is that we have a willing giver of the land in YRTC, who frankly doesn't want to administrate it any longer. HHS and DAS both say it's fine with us but we want to continue to get the rent off of the land. And so a compromise was reached where they will receive the net cash rent for the next ten years--the net cash rent. Now, there is an amendment to the bill, and one of them is to put in the "net" in front of cash rent because you could have expenses that could be considerable. But the other one, I think that there are some members of your committee that will particularly appreciate this, and what it is is this. Is that we asked YRTC for a legal

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description of the land. The land is south of Highway 30 at the west edge of the city of Kearney. It's a cornfield and we're talking in excess of 200 acres in this cornfield. The legal description that we receive from these people and put in the original bill actually ends up being the Meadowlark Golf Course in Kearney, which YRTC also owned up to about 15 years ago. Those of you that know Chancellor Kristensen, wasn't so sure that we should put an amendment to this bill. So I have an official from UNK here to talk about the bill and testify in favor of it. I did check with both HHS and DAS and I do not believe that they have anybody that is coming to support the bill, but they're in agreement.

SENATOR JANSSEN: Any questions? Senator Johnson, I have one. Did you say that the amount of cash rent now is, what, \$40,000?

SENATOR JOHNSON: \$36,000.

SENATOR JANSSEN: \$36,000 a year.

SENATOR JOHNSON: Yes.

SENATOR JANSSEN: Now, would that rent then go back to the University of Nebraska at Kearney then if they didn't do anything with that land right away?

SENATOR JOHNSON: No. It would be a direct pass through for ten years so that UNK would be the administrator of the land but if there were no expenses, say, and the rent was \$36,000, then all \$36,000 would be passed through to a HHS.

SENATOR JANSSEN: Okay. All right.

SENATOR JOHNSON: If there were expenses, then that would be deducted.

SENATOR JANSSEN: Whatever the net was.

SENATOR JOHNSON: Yes.

SENATOR JANSSEN: Right. Senator Wehrbein has a question.

SENATOR WEHRBEIN: So I assume...it's 200 acres, you said?

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SENATOR JOHNSON: It's in excess of 200; I forget exactly, Senator.

SENATOR WEHRBEIN: So they're going to use part of it now and the rest will stay in farmlands is the intent?

SENATOR JOHNSON: Yes; yes.

SENATOR WEHRBEIN: I mean they use only a tiny part--8 or 10 acres, I say?

SENATOR JOHNSON: Yes. That would be my guess.

SENATOR WEHRBEIN: And so...but the title just simply transfers? There is going to be a transition phase? Then it will be all UNK for future expansion as they...

SENATOR JOHNSON: Yes, after ten years.

SENATOR WEHRBEIN: And it's south of 30, huh?

SENATOR JOHNSON: Yes.

SENATOR WEHRBEIN: Hum. It's pretty flat, isn't it?

SENATOR JOHNSON: Yes. If you remember when you leave Kearney, it's south of the Boys Training School, Highway 30 makes a little loop there as it leaves town; it's the land on the south side. It's actually the land where the original old Kearney cotton mill was back in the 1880s when they tried raising cotton there.

SENATOR WEHRBEIN: You don't remember that, right?
(Laughter)

SENATOR JOHNSON: It's a little fuzzy anyhow.

SENATOR JANSSEN: Any other questions? Thank you, Senator.

SENATOR JOHNSON: You bet. Thank you.

SENATOR JANSSEN: Are you going to stick around to close, are you?

SENATOR JOHNSON: I'll stick around but I don't think there

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will be any need for closure, but we'll see.

SENATOR JANSSEN: All right. Proponents?

KATHLEEN SMITH: Hello. My name is Kathleen Smith and I'm vice chancellor for university relations at UNK. And I'm just here just to take a minute of your time to accent the fact that UNK is in support of this bill, Chancellor Kristensen, as well as the university is. And just to maybe further go into our plans, right now we don't really have any specific plans for the land. We foresee that it will continue in agriculture for the near future, but it does allow us some expansion possibilities for like a business incubator-type of park or something like that, as well as Senator Johnson mentioned, the Safety Center, possibility of expanding out there. But right now we do not have any firm plans regarding that. And as the bill says, that if we do sell the land prior to development, that the proceeds will go back to HHS. For the next ten years, if we continue to rent it out for agricultural purposes, the net proceeds go back to HHS. If we decide not to rent it, nothing would go to HHS. So, with that, I'm...

SENATOR JANSSEN: Okay. Senator Wehrbein.

SENATOR WEHRBEIN: Go ahead, if you wanted a question.

SENATOR JANSSEN: Well, I was just going to mention, you know, if you decided not to rent it, you know, I mean that would be rather foolish though.

KATHLEEN SMITH: Correct; correct. No.

SENATOR JANSSEN: I mean, you've got some very valuable land there, the way it sounds,...

KATHLEEN SMITH: That's right.

SENATOR JANSSEN: ...and you're getting pretty good rent off of that.

KATHLEEN SMITH: No, I...

SENATOR JANSSEN: I don't believe anyone would want to pass that up.

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KATHLEEN SMITH: No, I think... By the way, I will say to you, you know, we have land already that we rent out south of our campus right now that's farmland, that for expansion purposes.

SENATOR JANSSEN: Okay.

KATHLEEN SMITH: So this won't be anything new to us as far as, you know, renting out the farmland, so, no.

SENATOR JANSSEN: Okay. Senator Wehrbein.

SENATOR WEHRBEIN: Is there anybody here from HHS? I mean, you said there probably wasn't.

SENATOR JOHNSON: No.

SENATOR WEHRBEIN: I mean, I've got to ask this question because I happen...I've heard of this before...they apparently have no need for...or they have expansion ground there, or whatever, whatever? Maybe you don't know those answers.

KATHLEEN SMITH: I do not know that specifically, but, you know, that's south...this piece of land is south of Highway 30, and of course they're north of Highway 30, so...

SENATOR WEHRBEIN: But so are you.

KATHLEEN SMITH: Well, yes. Although we do have some...you know, our...the farmland that I'm talking about for future expansion is south of Highway 30, as well as the Safety Center currently is south of Highway 30. But you're right, the land itself is not that conducive to our campus as far as expanding really within our core kind of academic kind of buildings or anything like that.

SENATOR WEHRBEIN: Yes.

KATHLEEN SMITH: It would be more for, as we talked about, maybe a partnerships with the community as far as, you know, the business incubator kind of thing. But it would not...

SENATOR WEHRBEIN: It may not...you wouldn't want kids

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crossing that every hour.

KATHLEEN SMITH: Oh, no. It's...if you know where Bico's is, it's past there. You know, it's quite a distance...it's not quite a distance, I mean, but for students nowadays it's quite a distance.

SENATOR WEHRBEIN: I keep kind of wondering what is the real reason. I mean,...

KATHLEEN SMITH: Well, one of the reasons that I understand...now, again, this is not necessarily direct testimony, you know, this is what... Highway 30, you know, their talking about shifting it...

SENATOR WEHRBEIN: Oh.

KATHLEEN SMITH: ...you know, down right about that location, a couple miles. And there is an aspect of that. It will go...it will impact that piece of land. And I think YRTC is to the point that they're just tired of having to deal with it, and since we deal with it anyway, you know, with farmland anyway, that... And if the shift, it will impact irrigation and whether that...you know, just that whole aspect of dealing with that. I think that was another precipitating factor as far as why they...

SENATOR WEHRBEIN: Would it be accurate to say it ties in better with you than it does with YRTC as far as management?

KATHLEEN SMITH: I'd say so; I'd say so. I would doubt if they...

SENATOR WEHRBEIN: I mean it is still the state of Nebraska. And in a way I wonder how...why does it even have to go through statute?

KATHLEEN SMITH: Well,...

SENATOR WEHRBEIN: Okay, I'll leave it there.

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Kathleen.

KATHLEEN SMITH: Thank you very much.

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SENATOR JANSSEN: Any other proponents? Any opponents? Anyone in a neutral capacity? Senator Johnson to close if he'd like.

SENATOR JOHNSON: Today is long enough, isn't it?

SENATOR JANSSEN: Okay. I think we got the drift. Good enough. Thank you. That ends the hearing on LB 668. Senator Synowiecki to open on LB 702. Senator Synowiecki. You know he wasn't here this morning; I wonder if he is even here. We'll stand at ease for a moment until we locate Senator Synowiecki.

AT EASE

SENATOR JANSSEN: Senator Synowiecki, you are here to tell us all about LB 702. The floor is all yours.

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SENATOR SYNOWIECKI: Thank you, Senator Janssen. First of all, I apologize, Senator.

SENATOR JANSSEN: Well, you are busy man; we understand that.

SENATOR SYNOWIECKI: I was up in Business and Labor introducing another bill and kind of caught in the crossfire on scheduling today. Good afternoon. I am John Synowiecki. I represent District 7 in Omaha. Today I bring LB 702 for your consideration, a bill to revise statutes relating to the sale of alcoholic beverages between a wholesaler and a retailer. Under current rules and regulations established by the Nebraska Liquor Control Commission, a wholesaler is not allowed to accept a credit card from a retailer for the purchase of alcoholic beverages. The current regulations allow wholesalers to accept coins, currency, debit cards, business checks, cashier checks, certified checks, travelers checks, and bank money orders. LB 702 would merely establish a statute that a wholesaler may accept these forms of payment as well as a credit card. I bring LB 702 on behalf of retailers that have expressed concern regarding the credit card exclusion from current rule. However, I truly

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believe that LB 702 is beneficial to both retailers and wholesalers. The use of credit cards by retailers is a matter of convenience. Retailers would not be forced to hold large sums of money or go through the process of paying by check for liquor purchases. The use of credit cards by retailers will offer wholesalers greater security relative to the financial transaction. Once approved, a credit card guarantees the wholesaler payment for the purchase. Business checks, which are allowed under current rules, do not carry the same level of payment guarantee as an approved credit card. Regarding the processing of payment, I see no significant changes for wholesalers, as they are currently allowed to accept debit cards as a form of payment. Additionally, relative to beer deliveries specifically, acceptance of a credit card as a method of payment does not automatically presume that an electronic transaction must take place on site. Wholesalers can simply retain the retailer's credit card number on file; the retailer can sign for the purchase on site at the time of the delivery; and the wholesaler can conclude the transaction through the credit card company. This type of arrangement, I believe, is quite beneficial to both the retailer and the wholesaler. The Nebraska Liquor Control Commission has hesitated in the past to authorize the use of credit cards for payment between a retailer and a wholesaler. However, it needs to be noted that under current rules, consumers are allowed to purchase alcohol from a retailer with a credit card. Extending this privilege to the retailer/wholesaler transaction, I contend, is not a violation of the Nebraska Liquor Control Act, as the credit is not extended from the manufacturer or wholesaler. After the introduction of this bill, LB 702, the Nebraska Liquor Control Commission announced that they will hold a hearing later this spring to consider possible changes to rules and regulations to permit the use of credit cards by retailers. I appreciate and support this action and hope that we can work together to advance this policy. Thank you, Senator Janssen and members of the committee, for giving LB 702 your full consideration.

SENATOR JANSSEN: Thank you, Senator Synowiecki. Any questions? Seeing none, are you going to stick around to close, John?

SENATOR SYNOWIECKI: Yeah, I can stick around for this one. Thank you, Senator.

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SENATOR JANSSEN: Okay, that would be fine. Proponents of the bill; those wishing to speak in favor of this endeavor.

MIKE KELLEY: Senator Janssen, members of the committee, for the record again Mike Kelley, K-e-l-l-e-y, appearing here on behalf of Responsible Beverage Operators of Nebraska. We thank Senator Synowiecki for bringing the bill. It makes logical sense. I am informed by Mr. Rupe of the Liquor Commission is probably going to be handled administratively and we look forward to that. You probably don't need to do anything with this bill. I think it's a great idea that you've got it here though. For some reason, the commission didn't...the Legislature could act. We think it's a good policy. I believe it is...as he said, you can do it now as a retailer...or as a customer, as a retail person in a bar, a customer in a bar, you can do it. It makes no sense to me why we would discriminate and not let a retailer do it when they purchasing beer or alcohol. So I think it's logical sense and it's kind of...thank you, Senator Synowiecki. I think we should have done this a long time ago.

SENATOR JANSSEN: And questions? Mike, I have one. You can buy spirits on credit.

MIKE KELLEY: Yes, you've got 30 days.

SENATOR JANSSEN: You have 30 days. Why has beer always been cash?

MIKE KELLEY: Well, the traditional theories have been it's a destroyable product or a product that does not stay current, and therefore because it could go out of date you could say, well, now it's out of date and I don't want to pay for it. And you also want responsible operators and people that are...if they can't pay for their beer, if they are paying it...they are sliding too much, then you will have people that are not going to obey the liquor law and you have people that might sell it for a quarter or a dime, and you are obviously...even though you want responsible beverage operators. And so one of the ways to make sure of that is make sure they are paying their bills and make sure they pay their bills. And, also, for taxes, so the state gets their taxes right away. They have to advance taxes when they pay it, so that's another reason the wholesalers

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have always offered... And we have never really fought that; that's not been a big burning issue. You've got to pay for it anyway. I have no problem with C.O.D. But I think this is a little different twist. This is with a credit card, and obviously now credit cards offer great rebates back, so it's a tool for the retailers who are in kind of a tough economic times and tough industry. A lot of competition out there. It gives the retailer a chance to compete a little better, so I think it's a good idea. But it's something that's...there is a sound policy for doing it. It sounds kind of silly at first, but wholesalers have actually made the case to me over the years pretty well, pretty convincingly that it makes sense. And we don't object to it. But I think this is a different twist; this is different.

SENATOR JANSSEN: Okay. Any other questions? Thank you, Mike. Next proponent?

JIM MOYLAN: Jim Moylan, M-o-y-l-a-n, appearing again on behalf of the Nebraska Licensed Beverage Association. And we support this legislation and have...never had a problem with it over the years, but I just think it's fair that the retailers ought to be able to use a credit card to purchase it from the wholesalers. With reference to your question, I remember in 1967 when the beer wholesalers were split over the issue, but I think it passed that year. Senator Carpenter, I think, had a bill for the beer cash law. And they split, and I remember being around when it all happened, you know, and that's when that came about. Prior to that, it was 30 days on beer and liquor. But I think that was the year as I recall, so. I have no other...unless you have questions, but we would like to see it move along and we come in again to the twenty-first century.

SENATOR JANSSEN: Any questions? Thanks, Jim. Next proponent.

KATHY SIEFKEN: Senator Janssen and members of the committee, my name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n, here representing the Nebraska Grocery Industry Association, and we would like to thank Senator Synowiecki for bringing this bill. One of the reasons we like it is because having cash on hand can be dangerous at times. We've got some of our small store operators that are

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concerned about leaving either a blank check with their signature or cash to pay for the beer as it's delivered and just as a safety issue, being able to use a credit card for payment is something that we would appreciate being able to do. So with that, if you have any questions, I'd be happy to try to answer them.

SENATOR JANSSEN: Any questions? Kathy, one.

KATHY SIEFKEN: Yes, sir.

SENATOR JANSSEN: What would you say the average percentage of retail grocers association that have a beer license?

KATHY SIEFKEN: Probably...

SENATOR JANSSEN: About half?

KATHY SIEFKEN: Half. I think half; maybe a little bit higher than that. When you get out into the rural areas, some of them do not have licenses simply because their communities don't appreciate it and they've got liquor stores and bars that have off-sale so there really isn't a need in some of the smaller communities.

SENATOR JANSSEN: Okay. Thank you. Thank you for your testimony.

KATHY SIEFKEN: Thank you.

SENATOR JANSSEN: Next proponent, please?

TIM KEIGHER: Good afternoon, Chairman Janssen, members of the committee. My name is Tim Keigher, that's K-e-i-g-h-e-r. I appear before you today in support of this bill on behalf of the Nebraska Petroleum Marketers and Convenience Store Association, and I would also like to thank Senator Synowiecki for bringing this forward. And I think I'll just add, me too.

SENATOR JANSSEN: Okay. Any questions? Seeing no me too, so thank you. Any other proponents? Any opponents? Anyone in a neutral capacity?

HOBERT RUPE: Thank you, senators. My name is Hobert Rupe,

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R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. A brief little history. As you are aware, there are prohibitions...the three-tiered system where you have the manufacturer, then the wholesaler, then the retailer, and there are mechanisms in both the federal and the state's level to make sure that there is not too cozy of a relationship between the industry tiers because of some of the problems that were seen pre-Prohibition, where you would have a manufacturer would own the entire chain of command and there was problems with that and they had the whole chain of distribution. So in that there are restrictions against extensions of credit between those two levels...or those three levels. Years ago the issue came up before the commission, well, what about using a credit card from a consumer at a retail store? Are there extending credit to a customer, which is also a violation? An Attorney General's Opinion was offered on that that says, no, that the...actually it's the credit card company or the banking institutions that extend the credit, therefore it's fine. And the same rationale should apply here. And when this first was brought to my attention by Senator Synowiecki's office, I looked at the statute, and said, well, there is not a problem; they are not extending credit there. And then I looked at a relatively older and archaic rule which is, at the time, was modeled on the federal rules which says these are what acceptable forms of payment between these two levels of the tier...these two tiers are, and where it allows coins, currency, business check, a debit card even, so it's not that archaic because it recognizes debit cards, but it did not have a credit card. Just to let the commission know that...and I'm not even speaking rhetorically; I'm speaking factually; on my desk are the documents that I need to go through and sign to send over to the Governor's Office to begin rulemaking procedures to correct that oversight, to allow a business credit card to be utilized as a form of payment in that respect. It is my contention that this is probably an area that we can handle by rule and regulation and, in fact, I'm going to do it whether...what goes on here or not. If you guys pass this bill, I would have to change it anyway, but I think that that's where the prohibition can be fixed, most quickly. The current time frame for a rule and regulation would be we would have the public hearing on it in April and then the effective date would probably be September 1.

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SENATOR JANSSEN: Okay. Any questions? Seeing none, thank you, Hobie.

HOBERT RUPE: Thank you.

SENATOR JANSSEN: Anyone else in a neutral capacity? Seeing none, Senator Synowiecki waives closing. That ends the hearing on LB 702 and ends the hearing for today. Thank you all.